

ESTTA Tracking number: **ESTTA563664**

Filing date: **10/08/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Albaugh, Inc.
Granted to Date of previous extension	10/12/2013
Address	1525 NE 36th Street Ankeny, IA 50021 UNITED STATES

Correspondence information	Adam W Jones Albaugh Inc 1525 NE 36th Street Ankeny, IA 50021 UNITED STATES adamj@albaughinc.com Phone:5159655267
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Applicant Information

Application No	79119877	Publication date	08/13/2013
Opposition Filing Date	10/08/2013	Opposition Period Ends	10/12/2013
International Registration No.	1134297	International Registration Date	04/27/2012
Applicant	Tateho Kagaku Kogyo Kabushiki Kaisha 974, Aza Kato Kariya Ako-shi, Hyogo, 6780239 JAPAN		

Goods/Services Affected by Opposition

Class 001. Opposed goods and services in the class: plant growth regulating preparations

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3101464	Application Date	03/28/2003
Registration Date	06/06/2006	Foreign Priority Date	NONE
Word Mark	MEPSTAR		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2005/11/01 First Use In Commerce: 2005/11/01 Herbicides for commercial, industrial and agricultural use

Attachments	Notice of Opposition pleading - MAGSTAR - 10-08-2013.pdf(102400 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/adam jones/
Name	Adam W Jones
Date	10/08/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. 79/119877
For the MarkMAGSTAR
Published in the Official Gazette onAugust 13, 2013

ALBAUGH, INC.	
Opposer,	Serial No.: 79/119877
v.	Opposition No.: _____
TATEHO KAGAKU KOGYO KABUSHIKI KAISHA	
Applicant,	

NOTICE OF OPPOSITION

Opposer Albaugh, Incorporated, a corporation of Iowa located at 1525 NE 36th Street, Ankeny, Iowa 50021, believes that it will be damaged by registration of the mark shown in Application Serial No. 79/119877 in International Class 5 and hereby opposes the same under the provisions of Section 13 of the Trademark Act of July 5, 1946, as amended, 15 U.S.C. § 1063.

As grounds of opposition, Albaugh pleads the following:

1. Opposer has made continuous and extensive use of the trademarks MEPSTAR® (“Opposer's Mark”) which use has developed widespread public recognition and appeal for the Opposer's Mark in the marketplace for chemical pesticides.

2. Opposer is the Owner of all right, title, and interest in and to Opposer's Mark and is the owner of U.S. Registration No. 3,101,464 for Opposer's Mark. Opposer's registrations is valid

and subsisting and is conclusive evidence of Opposer's exclusive right to use Opposer's Mark in commerce for the Goods and for those goods and services in the zone of natural expansion thereof.

3. Through extensive and continuous use of Opposer's Mark, Opposer has established substantial goodwill in Opposer's Marks in connection with the Goods.

**APPLICANT'S MARK IS CONFUSINGLY SIMILAR
TO THE MARK OWNED AND REGISTERED BY OPPOSER**

4. Opposer's extensive promotion and use of the Opposer's Mark since November 1, 2005, has caused customers, prospective purchasers, and the public generally to immediately associate Opposer's Mark with Opposer and to expect a variety of agrochemical goods bearing the Opposer's Mark to have a connection with, or association with, Opposer.

5. On April 27, 2012, Applicant filed an application for registration of the mark MAGSTAR ("Applicant's Mark") as used to identify "plant growth regulating preparations" among other goods. Applicant's Mark was published for opposition on August 13, 2013.

6. On September 5, 2013, Opposer applied for and received a thirty day extension of time, ending October 12, 2013, to file an opposition to registration of Applicant's mark.

7. Applicant's basis for filing is intent to use, pursuant to Section 1(b) of the Lanham Act.

8. Opposer's use of the Opposer's Mark predates both Applicant's filing date, first use in commerce, and international registration date of April 27, 2012.

9. Applicant's Mark is essentially identical to the Opposer's Marks owned by Opposer.

10. The goods of Applicant's Mark include plant growth regulating compositions, and plant growth regulating compositions are sold within the same market as the Goods of Opposer's Mark.

11. The use and registration of Applicant's Mark to identify its goods is likely to cause confusion, mistake and deception as to the source, origin, sponsorship or association of the goods and will injure Opposer.

12. Applicant's Mark further dilutes the Opposer's Marks and the family of marks Opposer has developed, including: AGRI STAR®, Reg. Nos. 2,737,152 and 3,403,999; AQUA STAR®, Reg. No. 2,579,851; FALLOW STAR®, Reg. No. 2,574,381; FIVE STAR®, Reg. No. 2,458,523; GLY STAR®, Reg. No. 2,889,470; GLY-STAR PLUS®, Reg. No. 2,750,792; MEPSTAR®, Reg. No. 3,101,464; ORCHARD STAR®, Reg. No. 2,901,517; OXYSTAR®, Reg. No. 3,370,025; QUINSTAR®, Reg. No. 3,171,954; RANGE STAR®, Reg. No. 2,476,540; and TEBUSTAR®, Reg. No. 3,177,582.

13. Any defects, objections or faults found with the goods sold and rendered by Applicant under Applicant's Mark, because of the false association with Opposer, would inflict upon and seriously injure the reputation of Opposer.

14. The grant of a Certificate of Registration to Applicant for Applicant's Mark would be inconsistent with and in derogation of Opposer's prior rights and would therefore cause damage and injury to Opposer and deception of an confusion to the public.

For the reasons set forth in the foregoing paragraphs one through thirteen, Opposer believes that it would be damaged by the registration of Applicant's Mark, and thus Applicant should be denied registration of the mark in International Class 5.

WHEREFORE, Opposer prays that this opposition be sustained and that Application Serial No. 79/119877 be refused registration in International Class 5.

Respectfully submitted,

ALBAUGH, INCORPORATED

Date: October 8, 2013



Adam W. Jones, Reg. No. 57,116

Albaugh, Inc.

1525 NE 36th Street

Ankeny, Iowa 50021

Phone: 515.965.5267

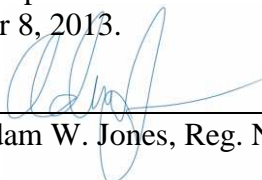
Fax: 515.964.9444

Email: AdamJ@albaughinc.com

ATTORNEY FOR OPPOSER

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is addressed to the Trademark Trial and Appeal Board, Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, and is being deposited via the Electronic System for Trademark Trials and Appeals (ESTTA) on October 8, 2013.



Adam W. Jones, Reg. No. 57,116